

ORIGINAL FILED

AUG 11 2008

Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

1 DAVID L. BACON (CA Bar No. 42692)
THELEN REID BROWN RAYSMAN & STEINER LLP
2 333 South Hope Street, 29th Floor
Los Angeles, CA 90071-3048
3 Telephone: 213.576.8000
Facsimile: 213.576.8080
4 E-mail: dlbacon@thelen.com

E-FILING

5 MICHAEL C. HALLERUD (CA Bar No. 68971)
ELLEN M. PAPADAKIS (CA Bar No. 186621)
6 THELEN REID BROWN RAYSMAN & STEINER LLP
101 Second Street, Suite 1800
7 San Francisco, CA 94105-3606
Telephone: 415.371.1200
8 Facsimile: 415.371.1211
E-mail: hallerud@thelen.com
9 E-mail: empapadakis@thelen.com

ADR

10 Attorneys for Plaintiff
CON-WAY INC.

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

RMW

16 CON-WAY INC.,

Case No. 08 03812

HRL

17 Plaintiff,

18 vs.

COMPLAINT

19 CENTRAL STATES, SOUTHEAST AND
20 SOUTHWEST AREAS PENSION FUND,

21 Defendant.

INTRODUCTION

1. Plaintiff CON-WAY INC.¹, on its own behalf and on behalf of all other qualifying business entities under “common control” at the material time, within the meaning of 29 U.S.C. § 1301(b), but excluding Consolidated Freightways Corporation of Delaware (“CFCD”), which was spun off in 1996 to create Consolidated Freightways Corporation (“CFC”), brings this action pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (“ERISA”), as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. § 1381 *et seq.* (“MPPAA”), to compel arbitration of controversies arising under MPPAA and the Central States, Southeast and Southwest Areas Pension Plan (“Plan”) or, in the alternative, for a declaration of Con-way’s rights under MPPAA.

2. Defendant CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND (“Central States”), a multiemployer pension plan under MPPAA, is threatening to impose liability upon Con-way for substantial sums representing CFC’s withdrawal liability. Central States’ efforts to impose such withdrawal liability upon Con-way are based on Central States’ violation of MPPAA and the Plan.

3. In 1996 Con-way Inc. (then known as Consolidated Freightways, Inc.) spun off its then wholly owned subsidiary, Consolidated Freightways Corporation of Delaware, which was then renamed Consolidated Freightways Corporation. CFC was then and at all times thereafter a wholly separate corporation and employer. The spin-off transaction occurred in Santa Clara County, California. Central States seeks to impose liability upon Con-way for CFC’s withdrawal liability to Central States by deeming the 1996 spin-off transaction a nullity and reconstituting the Con-way “controlled group” as it existed immediately before the spin-off of CFC. This is permitted under MPPAA and the Plan only if Central States has first made a determination that a “principal purpose” of Con-way’s 1996 spin-off of CFC was “to evade or avoid” CFC’s

¹ Con-way Inc. was formerly known as Consolidated Freightways, Inc., CNF Transportation Inc., and CNF Inc. Con-way Inc. and all qualifying business entities under “common control” within the meaning of 29 U.S.C. § 1301(b) are referred to herein as “Con-way.”

1 withdrawal liability, and, second, has given Con-way opportunities to seek internal Central States
2 review and to arbitrate Central States' determination of withdrawal liability.

3 4. No "evade or avoid" determination has been made and/or communicated to Con-
4 way by Central States, and no demand for payment by Central States has been received by Con-
5 way. Nevertheless, Central States proposed to Con-way on July 25, 2008, that Con-way meet with
6 Central States to "structure toward a resolution" of alleged withdrawal liability against Con-way.

7 **PARTIES**

8 5. Con-way Inc. is a corporation with its principal place of business in San Mateo,
9 California.

10 6. Central States is a multiemployer pension plan under 29 U.S.C. § 1002(37)(A).
11 Central States' principal place of business is Rosemont, Illinois.

12 **JURISDICTION**

13 7. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, because this
14 action arises under 29 U.S.C. §§ 1401 and 1451(a)(1), (c).

15 8. This Court has personal jurisdiction over Central States because Central States
16 regularly conducts business in the State of California.

17 **VENUE**

18 9. Venue is proper in this District pursuant to 29 U.S.C. §§ 1391(b)(1)-(2) and
19 1451(d) because Central States conducts business in this District and because a substantial part of
20 the events underlying this action occurred in this District. Venue is also proper in this District
21 because MPPAA, 29 U.S.C. § 1401(b)(3), provides that arbitration proceedings shall be conducted
22 in the same manner and carried out with the same powers as under the Federal Arbitration Act.

23 **INTRADISTRICT ASSIGNMENT**

24 10. Intradistrict venue is appropriate in the San Jose Division of this Court pursuant to
25 Civil Local Rule 3-2(c)-(d), because a substantial part of the events underlying this action
26 occurred in Santa Clara County, California.

FACTUAL ALLEGATIONS

11. Con-way Inc. is a holding company of transportation and logistics companies. Con-way Inc. and its affiliates collectively employ approximately 27,000 personnel across approximately 500 operating locations in 17 countries. Neither Con-way Inc. nor any of its affiliates are currently parties to collective bargaining or other agreements requiring pension contributions to Central States.

12. Con-way was organized in 1929 as Consolidated Truck Lines and consisted at the time of its formation of what would eventually grow into CFCD and be spun off in 1996 as CFC. The company was renamed Consolidated Freightways, Inc. in 1939. By the time of the 1996 spin-off, CFCD was one of the largest long-haul, "less-than-truckload" ("LTL") carriers in the United States. CFCD before the 1996 spin-off was party to collective bargaining agreements which required its contributions to Central States.

13. CFC continued, from the date of its formation in 1996 in the spin-off transaction and until it ceased operations and declared bankruptcy in 2002, to be one of the largest long-haul, LTL carriers in the United States and party to collective bargaining agreements requiring its contributions to Central States.

14. At the time of the spin-off, Ron Carey, then General President of the International Brotherhood of Teamsters, the union representing many CFCD/CFC employees, supported the transaction, stating that it "prevents the drain of resources from [CFCD's] unionized operations to subsidize the expansion of non-union subsidiaries." Stock analysts noted that CFC as an independent company would be more focused and would experience increased, positive cash flow.

15. CFCD was spun off for *bona fide* business reasons. Therefore, a "principal purpose" of the 1996 spin-off transaction was not "to evade or avoid" withdrawal liability, as required by 29 U.S.C. §§ 1392(c), 1401(f) for the imposition of withdrawal liability on Con-way.

16. CFC at its formation following the 1996 spin-off had no significant long-term debt; had a full complement of employees, rolling stock, and leased and owned real estate; and had an established brand and customer network. CFC also had substantial credit facilities to provide operating funds. And, CFC retained its pre-spin-off, experienced management team.

1 17. CFC was profitable on an annual basis in each year from 1997 through 1999, with
2 an upward trend in earnings in 1997 and 1998. CFC had positive quarter-end balances of cash and
3 cash equivalents for each quarter in 1997-99. CFC's share price was higher from 1997 through
4 1999 than its share price at the 1996 spin-off.

5 18. Admitted errors in business judgment by CFC management beginning in 1999,
6 structural changes in the transportation industry, poor economic conditions, and the terrorist
7 attacks of September 11, 2001, all contributed to the decision of CFC and various CFC corporate
8 affiliates to file for protection under Chapter 11 of the Bankruptcy Code on September 3, 2002. *In*
9 *re Consolidated Freightways Corp. of Delaware, et al.*, No. RS 02-24284 MG (Bankr., C.D. Cal.).
10 On information and belief, CFC permanently ceased operations involving Plan participants and
11 withdrew from Central States no later than February 2003.

12 19. Central States filed proofs of claim in the CFC bankruptcy proceedings on January
13 30 and February 7, 2003, against CFC and consolidated debtors, totaling \$319,059,063.38, for
14 "complete" withdrawal liability, as "complete" withdrawal liability is defined and delimited by 29
15 U.S.C. § 1383. Central States did not file a claim against CFC and consolidated debtors in the
16 CFC bankruptcy proceedings for "partial" withdrawal liability, as "partial" withdrawal liability is
17 defined and delimited by 29 U.S.C. § 1385. Central States did not file any claim in the CFC
18 bankruptcy proceedings for complete or partial withdrawal liability against Con-way.

19 20. Neither Con-way Inc. nor any Con-way Inc. affiliate was, as of September 3, 2002,
20 an "employer," as defined in 29 U.S.C. § 1002(5), with respect to any person on whose behalf
21 CFC was required to make contributions to Central States.

22 21. Neither Con-way Inc. nor any Con-way Inc. affiliate was, as of and after the 1996
23 spin-off of CFC, an "employer," as defined in 29 U.S.C. § 1002(5), with respect to any person on
24 whose behalf CFC was required to make contributions to Central States.

25 22. As of September 3, 2002, and continuously thereafter until at least December 2004,
26 Menlo Worldwide Forwarding, Inc. was a party to one or more collective bargaining agreements
27 requiring contributions to Central States. Menlo Worldwide Forwarding, Inc. was as of
28 September 3, 2002, and to December 2004 a wholly owned subsidiary ultimately of Con-way Inc.

23. Central States did not, in 1996, pursuant to 29 U.S.C. § 1392(c) and/or Appendix E of the Plan, determine that a principal purpose of the 1996 spin-off transaction by which CFC was formed was to evade or avoid withdrawal liability.

24. Central States did not, in 1996, pursuant to MPPAA and/or Appendix E of the Plan, determine that Con-way had complete withdrawal liability with respect to any person on whose behalf CFC was required to make contributions to Central States following the spin-off in 1996.

25. Central States did not, in 1996, pursuant to MPPAA and/or Appendix E of the Plan, determine that Con-way had partial withdrawal liability with respect to any person on whose behalf CFC was required to make contributions to Central States following the spin-off in 1996.

26. Central States did not, in 1996, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand payment of same, with respect to any person on whose behalf CFC was required to make contributions to Central States following the spin-off in 1996.

27. Central States did not notify Con-way in 1996 that Central States had, in 1996, determined pursuant to 29 U.S.C. § 1392(c) and/or Appendix E of the Plan that a principal purpose of the 1996 spin-off transaction by which CFC was formed was to evade or avoid withdrawal liability.

28. Central States did not, in 1997, pursuant to 29 U.S.C. § 1392(c) and/or Appendix E of the Plan, determine that a principal purpose of the 1996 spin-off transaction by which CFC was formed was to evade or avoid withdrawal liability.

29. Central States did not, in 1997, pursuant to MPPAA and/or Appendix E of the Plan, determine that Con-way had complete withdrawal liability with respect to any person on whose behalf CFC was required to make contributions to Central States following the spin-off in 1996.

30. Central States did not, in 1997, pursuant to MPPAA and/or Appendix E of the Plan, determine that Con-way had partial withdrawal liability with respect to any person on whose behalf CFC was required to make contributions to Central States following the spin-off in 1996.

31. Central States did not, in 1997, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand

1 payment of same, with respect to any person on whose behalf CFC was required to make
2 contributions to Central States following the spin-off in 1996.

3 32. Central States did not notify Con-way in 1997 that Central States had, in 1997 or
4 earlier, determined pursuant to 29 U.S.C. § 1392(c) and/or Appendix E of the Plan that a principal
5 purpose of the 1996 spin-off transaction by which CFC was formed was to evade or avoid
6 withdrawal liability.

7 33. Central States did not, in 1998, pursuant to 29 U.S.C. § 1392(c) and/or Appendix E
8 of the Plan, determine that a principal purpose of the 1996 spin-off transaction by which CFC was
9 formed was to evade or avoid withdrawal liability.

10 34. Central States did not, in 1998, pursuant to MPPAA and/or Appendix E of the Plan,
11 determine that Con-way had complete withdrawal liability with respect to any person on whose
12 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

13 35. Central States did not, in 1998, pursuant to MPPAA and/or Appendix E of the Plan,
14 determine that Con-way had partial withdrawal liability with respect to any person on whose
15 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

16 36. Central States did not, in 1998, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or
17 Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand
18 payment of same, with respect to any person on whose behalf CFC was required to make
19 contributions to Central States following the spin-off in 1996.

20 37. Central States did not notify Con-way in 1998 that Central States had, in 1998 or
21 earlier, determined pursuant to 29 U.S.C. § 1392(c) and/or Appendix E of the Plan that a principal
22 purpose of the 1996 spin-off transaction by which CFC was formed was to evade or avoid
23 withdrawal liability.

24 38. Central States did not, in 1999, pursuant to 29 U.S.C. § 1392(c) and/or Appendix E
25 of the Plan, determine that a principal purpose of the 1996 spin-off transaction by which CFC was
26 formed was to evade or avoid withdrawal liability.

1 39. Central States did not, in 1999, pursuant to MPPAA and/or Appendix E of the Plan,
2 determine that Con-way had complete withdrawal liability with respect to any person on whose
3 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

4 40. Central States did not, in 1999, pursuant to MPPAA and/or Appendix E of the Plan,
5 determine that Con-way had partial withdrawal liability with respect to any person on whose
6 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

7 41. Central States did not, in 1999, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or
8 Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand
9 payment of same, with respect to any person on whose behalf CFC was required to make
10 contributions to Central States following the spin-off in 1996.

11 42. Central States did not notify Con-way in 1999 that Central States had, in 1999 or
12 earlier, determined pursuant to 29 U.S.C. § 1392(c) and/or Appendix E of the Plan that a principal
13 purpose of the 1996 spin-off transaction by which CFC was formed was to evade or avoid
14 withdrawal liability.

15 43. Central States did not, in 2000, pursuant to 29 U.S.C. § 1392(c) and/or Appendix E
16 of the Plan, determine that a principal purpose of the 1996 spin-off transaction by which CFC was
17 formed was to evade or avoid withdrawal liability.

18 44. Central States did not, in 2000, pursuant to MPPAA and/or Appendix E of the Plan,
19 determine that Con-way had complete withdrawal liability with respect to any person on whose
20 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

21 45. Central States did not, in 2000, pursuant to MPPAA and/or Appendix E of the Plan,
22 determine that Con-way had partial withdrawal liability with respect to any person on whose
23 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

24 46. Central States did not, in 2000, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or
25 Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand
26 payment of same, with respect to any person on whose behalf CFC was required to make
27 contributions to Central States following the spin-off in 1996.

28

1 47. Central States did not notify Con-way in 2000 that Central States had, in 2000 or
2 earlier, determined pursuant to 29 U.S.C. § 1392(c) and/or Appendix E of the Plan that a principal
3 purpose of the 1996 spin-off transaction by which CFC was formed was to evade or avoid
4 withdrawal liability.

5 48. Central States did not, in 2001, pursuant to 29 U.S.C. § 1392(c) and/or Appendix E
6 of the Plan, determine that a principal purpose of the 1996 spin-off transaction by which CFC was
7 formed was to evade or avoid withdrawal liability.

8 49. Central States did not, in 2001, pursuant to MPPAA and/or Appendix E of the Plan,
9 determine that Con-way had complete withdrawal liability with respect to any person on whose
10 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

11 50. Central States did not, in 2001, pursuant to MPPAA and/or Appendix E of the Plan,
12 determine that Con-way had partial withdrawal liability with respect to any person on whose
13 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

14 51. Central States did not, in 2001, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or
15 Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand
16 payment of same, with respect to any person on whose behalf CFC was required to make
17 contributions to Central States following the spin-off in 1996.

18 52. Central States did not notify Con-way in 2001 that Central States had, in 2001 or
19 earlier, determined pursuant to 29 U.S.C. § 1392(c) and/or Appendix E of the Plan that a principal
20 purpose of the 1996 spin-off transaction by which CFC was formed was to evade or avoid
21 withdrawal liability.

22 53. Central States did not, in 2002, pursuant to 29 U.S.C. § 1392(c) and/or Appendix E
23 of the Plan, determine that a principal purpose of the 1996 spin-off transaction by which CFC was
24 formed was to evade or avoid withdrawal liability.

25 54. Central States did not, in 2002, pursuant to MPPAA and/or Appendix E of the Plan,
26 determine that Con-way had complete withdrawal liability with respect to any person on whose
27 behalf CFC was required to make contributions to Central States following the spin-off in 1996.
28

1 55. Central States did not, in 2002, pursuant to MPPAA and/or Appendix E of the Plan,
2 determine that Con-way had partial withdrawal liability with respect to any person on whose
3 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

4 56. Central States did not, in 2002, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or
5 Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand
6 payment of same, with respect to any person on whose behalf CFC was required to make
7 contributions to Central States following the spin-off in 1996.

8 57. Central States did not notify Con-way in 2002 that Central States had, in 2002 or
9 earlier, determined pursuant to 29 U.S.C. § 1392(c) and/or Appendix E of the Plan that a principal
10 purpose of the 1996 spin-off transaction by which CFC was formed was to evade or avoid
11 withdrawal liability.

12 58. On January 30, 2003, Central States stated to Con-way that Central States had not
13 yet made a determination of withdrawal liability against Con-way, and would talk to Con-way first
14 and “not arbitrarily pull the trigger.”

15 59. In August 2003 Central States advised Con-way that Central States had not yet
16 made an “evade or avoid” determination and, in fact, had not yet even engaged a forensic
17 accountant to conduct the analysis to inform any such determination.

18 60. In October 2003 Central States made oral representations to Con-way that Central
19 States had not yet made a determination of withdrawal liability against Con-way.

20 61. Central States did not, in 2003, pursuant to 29 U.S.C. §§ 1392(c) and 1401(f)
21 and/or Appendix E of the Plan, determine that a principal purpose of the 1996 spin-off transaction
22 by which CFC was formed was to evade or avoid withdrawal liability.

23 62. Central States did not, in 2003, pursuant to MPPAA and/or Appendix E of the Plan,
24 determine that Con-way had complete withdrawal liability with respect to any person on whose
25 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

26 63. Central States did not, in 2003, pursuant to MPPAA and/or Appendix E of the Plan,
27 determine that Con-way had partial withdrawal liability with respect to any person on whose
28 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

1 64. Central States did not, in 2003, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or
2 Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand
3 payment of same, with respect to any person on whose behalf CFC was required to make
4 contributions to Central States following the spin-off in 1996.

5 65. Central States did not notify Con-way in 2003 that Central States had determined in
6 2003 or earlier, pursuant to 29 U.S.C. §§ 1392(c) and 1401(f) and/or Appendix E of the Plan, that
7 a principal purpose of the 1996 spin-off transaction by which CFC was formed was to evade or
8 avoid withdrawal liability.

9 66. Central States did not, in 2004, pursuant to 29 U.S.C. §§ 1392(c) and 1401(f)
10 and/or Appendix E of the Plan, determine that a principal purpose of the 1996 spin-off transaction
11 by which CFC was formed was to evade or avoid withdrawal liability.

12 67. Central States did not, in 2004, pursuant to MPPAA and/or Appendix E of the Plan,
13 determine that Con-way had complete withdrawal liability with respect to any person on whose
14 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

15 68. Central States did not, in 2004, pursuant to MPPAA and/or Appendix E of the Plan,
16 determine that Con-way had partial withdrawal liability with respect to any person on whose
17 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

18 69. Central States did not, in 2004, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or
19 Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand
20 payment of same, with respect to any person on whose behalf CFC was required to make
21 contributions to Central States following the spin-off in 1996.

22 70. Central States did not notify Con-way in 2004 that Central States had, in 2004 or
23 earlier, determined pursuant to 29 U.S.C. §§ 1392(c) and 1401(f) and/or Appendix E of the Plan
24 that a principal purpose of the 1996 spin-off transaction by which CFC was formed was to evade
25 or avoid withdrawal liability.

26 71. In May 2004 Central States advised Con-way that no determination of withdrawal
27 liability against Con-way had been made, but that a forensic accountant had been engaged to
28 conduct the analysis to inform any such determination.

1 72. Central States did not, in 2005, pursuant to 29 U.S.C. §§ 1392(c) and 1401(f)
2 and/or Appendix E of the Plan, determine that a principal purpose of the 1996 spin-off transaction
3 by which CFC was formed was to evade or avoid withdrawal liability.

4 73. Central States did not, in 2005, pursuant to MPPAA and/or Appendix E of the Plan,
5 determine that Con-way had complete withdrawal liability with respect to any person on whose
6 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

7 74. Central States did not, in 2005, pursuant to MPPAA and/or Appendix E of the Plan,
8 determine that Con-way had partial withdrawal liability with respect to any person on whose
9 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

10 75. Central States did not, in 2005, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or
11 Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand
12 payment of same, with respect to any person on whose behalf CFC was required to make
13 contributions to Central States following the spin-off in 1996.

14 76. Central States did not notify Con-way in 2005 that Central States had, in 2005 or
15 earlier, determined pursuant to 29 U.S.C. §§ 1392(c) and 1401(f) and/or Appendix E of the Plan
16 that a principal purpose of the 1996 spin-off transaction by which CFC was formed was to evade
17 or avoid withdrawal liability.

18 77. Central States did not, in 2006, pursuant to 29 U.S.C. §§ 1392(c) and 1401(f)
19 and/or Appendix E of the Plan, determine that a principal purpose of the 1996 spin-off transaction
20 by which CFC was formed was to evade or avoid withdrawal liability.

21 78. Central States did not, in 2006, pursuant to MPPAA and/or Appendix E of the Plan,
22 determine that Con-way had complete withdrawal liability with respect to any person on whose
23 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

24 79. Central States did not, in 2006, pursuant to MPPAA and/or Appendix E of the Plan,
25 determine that Con-way had partial withdrawal liability with respect to any person on whose
26 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

27 80. Central States did not, in 2006, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or
28 Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand

1 payment of same, with respect to any person on whose behalf CFC was required to make
2 contributions to Central States following the spin-off in 1996.

3 81. Central States did not notify Con-way in 2006 that Central States had, in 2006 or
4 earlier, determined pursuant to 29 U.S.C. §§ 1392(c) and 1401(f) and/or Appendix E of the Plan
5 that a principal purpose of the 1996 spin-off transaction by which CFC was formed was to evade
6 or avoid withdrawal liability.

7 82. Central States did not, in 2007, pursuant to 29 U.S.C. §§ 1392(c) and 1401(f)
8 and/or Appendix E of the Plan, determine that a principal purpose of the 1996 spin-off transaction
9 by which CFC was formed was to evade or avoid withdrawal liability.

10 83. Central States did not, in 2007, pursuant to MPPAA and/or Appendix E of the Plan,
11 determine that Con-way had complete withdrawal liability with respect to any person on whose
12 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

13 84. Central States did not, in 2007, pursuant to MPPAA and/or Appendix E of the Plan,
14 determine that Con-way had partial withdrawal liability with respect to any person on whose
15 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

16 85. Central States did not, in 2007, pursuant to 29 U.S.C. §§ 1382 and 1399(b) and/or
17 Appendix E of the Plan, notify Con-way of the amount of any withdrawal liability and demand
18 payment of same, with respect to any person on whose behalf CFC was required to make
19 contributions to Central States following the spin-off in 1996.

20 86. Central States did not notify Con-way in 2007 that Central States had, in 2007 or
21 earlier, determined pursuant to 29 U.S.C. §§ 1392(c) and 1401(f) and/or Appendix E of the Plan
22 that a principal purpose of the 1996 spin-off transaction by which CFC was formed was to evade
23 or avoid withdrawal liability.

24 87. Central States did not, in 2008 as of the date this action was commenced, pursuant
25 to 29 U.S.C. §§ 1392(c) and 1401(f) and/or Appendix E of the Plan, officially determine that a
26 principal purpose of the 1996 spin-off transaction by which CFC was formed was to evade or
27 avoid withdrawal liability.

28

1 88. Central States did not, in 2008 as of the date this action was commenced, pursuant
2 to MPPAA and/or Appendix E of the Plan, officially determine that Con-way had complete
3 withdrawal liability with respect to any person on whose behalf CFC was required to make
4 contributions to Central States following the spin-off in 1996.

5 89. Central States did not, in 2008 as of the date this action was commenced, pursuant
6 to MPPAA and/or Appendix E of the Plan, officially determine that Con-way had partial
7 withdrawal liability with respect to any person on whose behalf CFC was required to make
8 contributions to Central States following the spin-off in 1996.

9 90. Central States did not, in 2008 as of the date this action was commenced, pursuant
10 to 29 U.S.C. §§ 1382 and 1399(b) and/or Appendix E of the Plan, notify Con-way of the amount
11 of any withdrawal liability and demand payment of same, with respect to any person on whose
12 behalf CFC was required to make contributions to Central States following the spin-off in 1996.

13 91. Central States did not notify Con-way in 2008 as of the date this action was
14 commenced that Central States had, in 2008 or earlier, officially determined pursuant to 29 U.S.C.
15 §§ 1392(c) and 1401(f) and/or Appendix E of the Plan that a principal purpose of the 1996 spin-
16 off transaction by which CFC was formed was to evade or avoid withdrawal liability.

17 92. On September 4, 2002, and April 26, 2004, Central States requested of Con-way
18 documentation to determine if a principal purpose of the 1996 spin-off of CFC was to evade or
19 avoid withdrawal liability. Central States modified its April 26, 2004, request on May 12, 2004.
20 Con-way complied fully with the Central States' requests for documentation, completing its
21 compliance in August 2004. Central States made no further requests of Con-way for
22 documentation.

23 93. On July 25, 2008, Central States advised Con-way that the Central States Board of
24 Trustees had not yet been asked to make a determination of withdrawal liability against Con-way.
25 Simultaneously, however, Central States also proposed to Con-way a meeting with Con-way to
26 "structure toward a resolution" of alleged withdrawal liability against Con-way. Con-way
27 understood Central States' July 25, 2008, advice as a threat that Central States would soon make
28 an official determination of withdrawal liability.

FIRST CLAIM FOR RELIEF

94. Con-way incorporates by reference its allegations in paragraphs 1-93.

95. On August 11, 2008, Con-way filed a written notice (attached hereto as Exhibit A) with the American Arbitration Association, and served same upon Central States, all as specified by Appendix E of the Plan, of its demand that Central States, if it has made a determination of withdrawal liability against Con-way, be required to arbitrate, pursuant to 29 U.S.C. § 1401, the arbitrable controversies between Central States and Con-way.

96. Con-way seeks an order, pursuant to 29 U.S.C. § 1401, compelling Central States to arbitrate such controversies.

SECOND CLAIM FOR RELIEF

97. Con-way incorporates by reference its allegations in paragraphs 1-93.

98. As a result of Central States' statements to Con-way set forth in paragraph 93 above, Con-way has a reasonable apprehension that Central States, in violation of MPPAA and in breach of the Plan, has recently determined, officially or unofficially, that Con-way has withdrawal liability to Central States.

99. As a result of Central States' statements to Con-way set forth in paragraph 93 above, Con-way has a reasonable apprehension that Central States may commence a civil action against Con-way to collect alleged withdrawal liability without first providing legally sufficient notice of the determination of withdrawal liability and affording Con-way its rights under MPPAA and the Plan to seek internal Central States review of and arbitrate such determination. Any such civil action by Central States would violate MPPAA, breach the Plan, irreparably injure Con-way as a publicly held corporation, and leave Con-way without an adequate remedy at law.

100. Con-way seeks an injunction prohibiting Central States from commencing any civil action to collect any alleged withdrawal liability determined without full compliance with MPPAA and the Plan, including giving Con-way legally sufficient notice of any determination of withdrawal liability and affording Con-way its MPPAA and Plan rights to seek review of such determination by Central States' Board of Trustees and arbitration of any adverse determination.

THIRD CLAIM FOR RELIEF

101. Con-way incorporates by reference its allegations in paragraphs 1-93.

102. Con-way has no withdrawal liability to Central States unless it is finally determined, pursuant to MPPAA and the Plan, that a principal purpose of the 1996 transaction by which CFC was spun off was to evade or avoid withdrawal liability to Central States.

103. In the alternative to the First and Fourth Claims for Relief, Con-way seeks a declaration, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that, because Central States has not made and/or notified Con-way of any determination that a principal purpose of its 1996 spin-off of CFC was to evade or avoid withdrawal liability, Con-way has no withdrawal liability to Central States.

FOURTH CLAIM FOR RELIEF

104. Con-way incorporates by reference its allegations in paragraphs 1-93.

105. In the alternative to the First and Third Claims for Relief, if Central States has made, but has not notified Con-way of, an assessment of withdrawal liability against Con-way, Central States' failures timely to notify Con-way of Central States' determination of withdrawal liability, timely to notify Con-way of the amount of any such alleged liability, timely to provide Con-way with the schedule for alleged liability payments, and timely to demand payment in accordance with the schedule violate 29 U.S.C. § 1399(b).

106. Any Central States' failures alleged in paragraph 105 above have damaged Con-way by wrongfully impeding Con-way's rights under 29 U.S.C. § 1399(b) and Appendix E of the Plan to seek review by the Plan's Withdrawal Liability Review Committee of the Plan's determination of withdrawal liability, of the amount of any such alleged liability, and of the schedule for payment of any such alleged withdrawal liability.

107. Central States' failures alleged in paragraph 105 have damaged Con-way by wrongfully impeding Con-way's rights under 29 U.S.C. § 1401 and Appendix E of the Plan to demand arbitration of the Plan's determination of withdrawal liability, of the amount of any such alleged liability, and of the schedule for payment of any such alleged withdrawal liability.

1 108. In the alternative to the First and Third Claims for Relief, Con-way seeks a
2 declaration, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that, because Central
3 States has not timely notified Con-way of any determination of withdrawal liability, Con-way has
4 no withdrawal liability to Central States.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Con-way prays for relief as follows:

7 1. An order pursuant to the First Claim for Relief compelling Central States to arbitrate the
8 controversies set forth in Con-way's August 11, 2008, written notice to the American Arbitration
9 Association.

10 2. Preliminary and permanent injunctive relief pursuant to the Second Claim for Relief
11 prohibiting Central States from filing and/or prosecuting a civil action against Con-way to collect
12 alleged withdrawal liability determined in violation of MPPAA and in breach of the Plan.

13 3. In the alternative, a declaration pursuant to the Third and Fourth Claims for Relief that
14 Con-way has no withdrawal liability to Central States.

15 4. Any and all other relief to which Con-way may be entitled.

16
17 Dated: August 11, 2008

18 THELEN REID BROWN RAYSMAN & STEINER LLP

19
20 By David L. Bacon
21 David L. Bacon
22 Attorneys for Plaintiff CON-WAY INC.
23
24
25
26
27
28

1 DAVID L. BACON
THELEN REID BROWN RAYSMAN & STEINER LLP
2 333 South Hope Street, 29th Floor
Los Angeles, CA 90071-3048
3 Telephone: 213.576.8000
Facsimile: 213.576.8080
4 E-mail: dlbacon@thelen.com

5 MICHAEL C. HALLERUD
ELLEN M. PAPADAKIS
6 THELEN REID BROWN RAYSMAN & STEINER LLP
101 Second Street, Suite 1800
7 San Francisco, CA 94105-3606
Telephone: 415.371.1200
8 Facsimile: 415.371.1211
E-mail: hallerud@thelen.com
9 E-mail: empapadakis@thelen.com

10 Attorneys for CON-WAY INC.

11
12
13 **AMERICAN ARBITRATION ASSOCIATION**
14 **MULTI-EMPLOYER PENSION PLAN**
15 **WITHDRAWAL LIABILITY ARBITRATION TRIBUNAL**

16 CON-WAY INC.

17 vs.

18 CENTRAL STATES, SOUTHEAST AND
19 SOUTHWEST PENSION PLAN

DEMAND FOR ARBITRATION

20
21
22 **INTRODUCTION**

23 1. Plaintiff CON-WAY INC.¹, on its own behalf and on behalf of all other qualifying
24 business entities under "common control" at the material time, within the meaning of 29 U.S.C. §
25 1301(b), but excluding Consolidated Freightways Corporation of Delaware ("CFCD"), which was

26
27 ¹ Con-way Inc. was formerly known as Consolidated Freightways, Inc., CNF Transportation Inc.,
28 and CNF Inc. Con-way Inc. and all qualifying business entities under "common control" within
the meaning of 29 U.S.C. § 1301(b) are referred to herein as "Con-way."

1 spun off in 1996 to create Consolidated Freightways Corporation ("CFC"), demands arbitration of
 2 controversies arising under the Central States, Southeast and Southwest Areas Pension Plan
 3 ("Plan") and the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*
 4 ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C.
 5 § 1381 *et seq.* ("MPPAA").

6 2. This Demand is presented against the CENTRAL STATES, SOUTHEAST AND
 7 SOUTHWEST AREAS PENSION FUND ("Central States"). Central States' representatives are:

8 Thomas C. Nyhan
 9 Executive Director and General Counsel

10 James P. Condon
 11 Deputy General Counsel

12 Central States, Southeast and Southwest Pension Fund
 13 9377 W. Higgins Road, 19th Floor
 14 Rosemont, IL 60018-4938
 15 Telephone: 847-518-9800
 16 E-mail: tnyhan@centralstates.org
 17 jcondon@centralstates.org

18 3. The controversies subject to this Demand arise under MPPAA and the Plan.

19 4. ERISA section 4221, 29 U.S.C. § 1401, provides that "[a]ny dispute between an
 20 employer and the plan sponsor of a multiemployer plan concerning [withdrawal liability] shall be
 21 resolved through arbitration." Appendix E of the Plan, Section 6(b)(1), provides for arbitration of
 22 withdrawal liability disputes under the Multiemployer Pension Plan Arbitration Rules of the
 23 American Arbitration Association.

24 STATEMENT OF FACTS

25 5. Con-way Inc. is a Delaware corporation headquartered in San Mateo, California.
 26 In 1996 Con-way Inc., then known as Consolidated Freightways, Inc., spun off its then wholly
 27 owned subsidiary, Consolidated Freightways Corporation of Delaware, to form Consolidated
 28 Freightways Corporation ("CFC"). CFC was then and at all times thereafter a wholly separate
 corporation and employer.

6. CFC was from its spin-off in 1996 one of the largest long-haul, "less-than-
 truckload" carriers in the United States. CFC was a party to collective bargaining agreements

1 requiring its contributions to Central States. CFC ceased operations and declared bankruptcy in
2 2002. CFC permanently ceased operations involving Plan participants and withdrew from Central
3 States no later than February 2003.

4 7. Central States is a multiemployer pension plan under MPPAA.

5 8. Central States has by its communications and conduct, continually since CFC filed
6 for bankruptcy in 2002, and as recently as July 25, 2008, assured Con-way that no determination
7 of withdrawal liability against Con-way had been made under MPPAA and the Plan.

8 9. On July 25, 2008, Central States also proposed to Con-way a meeting to "structure
9 toward a resolution" of alleged withdrawal liability against Con-way. As a result, Con-way has a
10 reasonable apprehension that Central States, in violation of MPPAA and in breach of the Plan, has
11 recently determined withdrawal liability against Con-way.

12 10. If Central States contends it has made an assessment of withdrawal liability against
13 Con-way, Central States has not given legally sufficient notice to Con-way of such assessment.
14 Therefore, Central States has violated MPPAA and the Plan by its failures timely to notify Con-
15 way of Central States' determination of withdrawal liability (including, pursuant to 29 U.S.C. §§
16 1392(c) and 1401(f) and Appendix E of the Plan, that a principal purpose of the 1996 spin-off
17 transaction by which CFC was formed was to evade or avoid withdrawal liability), timely to notify
18 Con-way of the amount of any such alleged liability, timely to provide Con-way with the schedule
19 for alleged liability payments, and timely to demand payment in accordance with the schedule.

20 11. Any such failures by Central States wrongfully impede Con-way's rights under
21 MPPAA and the Plan to seek review by the Plan's Withdrawal Liability Review Committee of the
22 Plan's determination of withdrawal liability (including, pursuant to 29 U.S.C. §§ 1392(c) and
23 1401(f) and Appendix E of the Plan, that a principal purpose of the 1996 spin-off transaction by
24 which CFC was formed was to evade or avoid withdrawal liability), the amount of any such
25 alleged liability, and the schedule for payment of any such alleged withdrawal liability.

26 12. Any such failures by Central States wrongfully impede Con-way's rights under
27 MPPAA and the Plan to demand arbitration of the Plan's determination of withdrawal liability, the
28

1 amount of any such alleged liability, and the schedule for payment of any such alleged withdrawal
2 liability.

3 FIRST CONTROVERSY

4 If Central States has made a determination of withdrawal liability against Con-way, Con-
5 way hereby demands arbitration of its present dispute with Central States over the sufficiency of
6 Central States' notice of withdrawal liability (including, pursuant to 29 U.S.C. §§ 1392(c) and
7 1401(f) and Appendix E of the Plan, that a principal purpose of the 1996 spin-off transaction by
8 which CFC was formed was to evade or avoid withdrawal liability), notice of the amount of any
9 such alleged liability, and notice of the schedule for payment of any such alleged withdrawal
10 liability.

11 SECOND CONTROVERSY

12 If Central States has made a determination of withdrawal liability against Con-way, Con-
13 way hereby demands arbitration of its present dispute with Central States over the existence of
14 such withdrawal liability (including, pursuant to 29 U.S.C. §§ 1392(c) and 1401(f) and Appendix
15 E of the Plan, that a principal purpose of the 1996 spin-off transaction by which CFC was formed
16 was to evade or avoid withdrawal liability), the amount of any such alleged liability, and the
17 schedule for payment of any such alleged withdrawal liability.

18 REQUEST FOR AWARD

19 Con-way respectfully requests, pursuant to Section 38 of the Multiemployer Pension Plan
20 Arbitration Rules, all remedies and relief within the scope of ERISA and the Plan which are in
21 order based on the record, including all arbitration fees and costs and attorneys fees.

22 Dated: August 11, 2008

23 THELEN REID BROWN RAYSMAN & STEINER LLP

24
25 By David L. Bacon
26 David L. Bacon
27 Attorneys for CON-WAY INC.
28